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15 IN THE UNITED STATES DISTRICT COURT
16 FOR THE NORTHERN DISTRICT OF CALIFORNIA
17 OAKLAND DIVISION

18 **ELOY ORTIZ OAKLEY, in his official**
19 **capacity as Chancellor of California**
20 **Community Colleges et al.,**

21 Plaintiffs,
22 v.

23 **PHIL ROSENFELT, in his official capacity**
24 **as the United States Acting Secretary of**
25 **Education¹; U.S. DEPARTMENT OF**
26 **EDUCATION,**

27 Defendants.

28 Case No. 4:20-cv-3215-YGR

1 **STIPULATED REQUEST TO HOLD**
2 **PROCEEDINGS IN ABEYANCE;**
3 **PROPOSED ORDER**

4 Judge: Honorable Yvonne Gonzalez Rogers
5 Trial Date: None Set
6 Action Filed: May 11, 2020
7 Hearing date: May 25, 2021

8 **STIPULATION TO HOLD PROCEEDINGS IN ABEYANCE**

9 Pursuant to Northern District of California Civil Local Rules 6-1 and 6-2, the Parties
10 submit this stipulation and proposed order in order to request that the Court hold proceedings in
11 this action in abeyance and stay for 60 days the briefing schedule previously approved by the
12 Court in its Order of January 19, 2021 [ECF 62]. In support of this request, the Parties stipulate
13 and agree as follows:

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28 ¹ Pursuant to Fed. R. Civ. P. 25(d), Phil Rosenfelt is automatically substituted as a defendant in
this action.

1 1. On May 11, 2020, Plaintiffs filed a Complaint for Declaratory, Injunctive, and
2 Mandamus Relief in this Court based on Defendants' alleged imposition of student eligibility
3 requirements for Higher Education Emergency Relief Fund disbursements under the CARES Act
4 and based on agency actions taken on or around April 21, 2020. ECF No. 1.

5 2. On May 13, 2020, Plaintiffs filed a Motion for Preliminary Injunction ("PI
6 Motion"). ECF No. 16.

7 3. On June 11, 2020, Defendants filed with the Court an Interim Final Rule ("IFR")
8 addressing the student eligibility requirements challenged in Plaintiffs' Complaint and PI
9 Motion. The Department of Education officially published the IFR in the *Federal Register* on
10 June 17, 2020, setting the deadline for public comments on the IFR as July 17, 2020.
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12 4. On June 17, 2020, the Court entered an Order Granting Plaintiffs' PI Motion. ECF
13 No. 44.

14 5. Pursuant to a previously-agreed-upon schedule, Plaintiffs filed an Amended
15 Complaint on November 6, 2020. ECF No. 55.

16 6. Pursuant to the Court's Order of January 19, 2021 [ECF No. 62], the current
17 briefing schedule for cross-motions for summary judgment is as follows:

- 18 • **February 9, 2021:** Defendants' deadline to file a motion for summary judgment, not
19 to exceed 40 pages.
- 20 • **March 16, 2021:** Plaintiffs' deadline to file a combined opposition to Defendants'
21 motion for summary judgment and cross-motion for summary judgment, not to
22 exceed 45 pages.
- 23 • **April 6, 2021:** Defendants' deadline to file a combined opposition to Plaintiffs' cross-
24 motion for summary judgment and reply to Plaintiffs' opposition to Defendants'
25 motion for summary judgment, not to exceed 35 pages.
- 26 • **April 20, 2021:** Plaintiffs' deadline to reply to Defendants' opposition to Plaintiffs'
27 cross-motion for summary judgment, not to exceed 30 pages.
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7. The Court also set a hearing on the parties' cross-motions for May 25, 2021, at 2:00 p.m. ECF No. 62.

8. On January 20, 2021, new leadership assumed responsibility for the United States Department of Education. The new leadership intends to consider the public comments submitted in response to the IFR and anticipates publishing a final rule or taking other action to address the issues raised in those comments. In light of these developments, counsel for Defendants conferred with counsel for Plaintiffs, and the Parties have agreed and jointly request that, in order to afford these officials time to become familiar with the issues in this case and complete their consideration of further action, proceedings in this case be held in abeyance for sixty days.² The Parties further agree and propose that, at the end of this sixty-day period, the Parties will file a joint status report apprising the Court of the status of the Department's consideration and whether the Parties wish to proceed with briefing cross-motions for summary judgment, including, if applicable, a revised briefing schedule.

9. The Parties thus respectfully request that the Court enter an order (1) holding proceedings in this action in abeyance for sixty days; (2) continuing the currently-scheduled May 25, 2021 hearing date pending further order of the Court; and (3) ordering the parties to file a joint status report no later than sixty days from the date of the Court's order, apprising the Court of the status of the Department's consideration and whether the Parties wish to proceed with briefing cross-motions for summary judgment, including, if applicable, a revised briefing schedule.

Dated: January 29, 2021

Respectfully submitted,

BRIAN M. BOYNTON
Acting Assistant Attorney General

MARCIA BERMAN

² Two other cases pending in the District of Massachusetts, also challenging the IFR, have already been held in abeyance for sixty days. *See Noerand v. Rosenfelt*, No. 1:20-cv-11271 (D. Mass.); *Massachusetts v. Rosenfelt*, No. 1:20-cv-11600 (D. Mass.).

1 Assistant Director, Federal Programs Branch
2

3 */s/ Kathryn L. Wyer*
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13 Dated: January 29, 2021

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25 */s/*
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28 *Attorneys for Plaintiffs Eloy Ortiz Oakley and
Board of Governors of the California Community
Colleges*

ATTORNEY ATTESTATION

Pursuant to Civil Local Rule 5-1(i)(3), I, Kathryn Wyer, hereby attest that concurrence in the filing of this document has been obtained from any signatories indicated by a "conformed" signature (/s/) within this e-filed document. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: January 29, 2021

/s/Kathryn Wyer
Kathryn Wyer

1 **[PROPOSED] ORDER APPROVING STIPULATION**

2 On January 29, 2021, the Parties filed a Stipulated Request to Hold Proceedings in
3 Abeyance. Upon this submission and stipulation of the Parties, and good cause appearing, IT IS
4 HEREBY ORDERED THAT proceedings in this action are held in abeyance; all pending
5 deadlines are STAYED; and the hearing currently set for May 25, 2021, is CONTINUED
6 pending further order of the Court. The Parties shall file a Joint Status Report no later than sixty
7 days from the date of this Order, apprising the Court of the current status of the Department's
8 consideration; whether the Parties wish to proceed with briefing cross-motions for summary
9 judgment; and, if applicable, proposing a revised briefing schedule.

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11 PURSUANT TO STIPULATION, IT IS SO ORDERED.
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14 Dated: _____

15 The Honorable Yvonne Gonzalez Rogers
16 United States District Judge
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